IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11808 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YAGNAVALKAYA COOPERATIVE HOUSING SOCIETY LIMITED

Versus

RENUKABEN VINAYKUMAR SHAH

Appearance:

1. Special Civil Application No. 11808 of 2002

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MR YF MEHTA for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/12/2002

ORAL JUDGEMENT

Leave to add the District Registrar, Cooperative Societies, District Bharuch as respondent no.3.

Rule. Ms. Manisha Lavkumar, learned A.G.P. appears and waives service of rule on behalf of the State.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

Jayendra S.Shah claiming to be the Secretary, Yagnavalkaya Cooperative Housing Society Limited at Ankleshwar, District Bharuch, has filed this petition under Article 226/227 of the Constitution for challenging the judgment and order dated 21-11-2002 passed by the Gujarat State Cooperative Tribunal rejecting the petitioner's appeal no.99/2001 arising from the judgment and award of the Board of Nominees, Baroda, dismissing the petitioner/plaintiff's suit and vacating the interim injunction.

The petitioner had filed the above suit for declaration that respondents nos.1 and 2 herein had no authority to act as the President and Secretary of Yagnavalkaya Cooperative Housing Society Limited because the elections of the office bearers to the society were held on 31st March, 1998 in the presence of the representative of the District Registrar and the petitioner was one of the office bearers, but the respondents did not handover the records of the society to the newly elected body.

After hearing the parties and considering the material on record, the Board of Nominees as well as the Tribunal in appeal held that the respondents-defendants were the elected office bearers and were , therefore, entitled to retain the society's records with them, and that the suit was filed for the benefit of Mr. Kantilal Patel against whom a complaint for misappropriation of the society's funds was pending.

Aggrieved by the aforesaid judgments and orders, the petitioners have approached this Court submitting that the meeting was held on 24th September, 1998 in violation of the ad interim injunction granted by the Board of Nominees, and therefore, all the proceedings which took place at the said meeting on 24th September, 1998 were illegal. It is further stated that the elections were conducted by the office of the District Registrar, Cooperative Societies on 31st March, 1998, and therefore, the proceedings of the said meeting ought to

have been considered as valid.

On the other hand, Mr. Y.F. Mehta, learned Counsel for the respondents-defendants has opposed the petition and submitted that both the Courts below have not accepted the authenticity of the proceedings of the meeting allegedly held on 31st March, 1998, that the Board of Nominees as well as the Tribunal have given concurrent finding not believing the minutes of the proceedings and accepting the respondents-defendants claim that they were duly elected office bearers of the society, and hence, no interference is called for with the impugned orders.

Having heard the learned Counsel for the parties, it appears to the Court that in view of the passage of time after the elections were held on 24th September, 1998, the next elections are already overdue, and therefore, it would be in the fitness of things to dispose of this petition with a direction that the elections of the Managing Committee of Yagnvalkaya Cooperative Housing Society Ltd. shall be held within six weeks from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier. For conducting the elections respondent no.3-District Registrar of Cooperative Societies, Bharuch, shall appoint an officer not below the rank of Assistant Registrar of Cooperative Societies by 31st December, 2002. The petitioners as well as the respondents herein shall handover the records in their possession to such officer as may be nominated by the Registrar of Cooperative Societies for the aforesaid purpose of conducting elections, and thereafter, the said officer shall handover the records of the society to the officer bearers who are duly elected at the elections.

It is clarified that this Court has not gone into the merits of the dispute between the parties as it is not necessary to do so, having regard to the fact that whatever may be the factual position the next election of the Managing Committee of the Society is already overdue.

Rule is made absolute to the aforesaid extent only with no orders as to costs. Direct service permitted.

(M.S.Shah,J.)

stanley-mss.